

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

**FREEDOM FROM RELIGION
FOUNDATION, INC.; ANNE NICOL
GAYLOR; ANNIE LAURIE GAYLOR;
PAUL GAYLOR; DAN BARKER;
PHYLLIS ROSE, and
JILL DEAN,**

Plaintiffs,

v.

Case No. 08-CV-588

**PRESIDENT GEORGE W. BUSH; WHITE HOUSE
PRESS SECRETARY DANA PERINO; WISCONSIN
GOVERNOR JIM DOYLE; and SHIRLEY DOBSON,
CHAIRMAN OF THE NATIONAL
DAY OF PRAYER TASK FORCE,**

Defendants.

COMPLAINT

1. This is an action by the plaintiffs seeking a declaration that Public Law 100-307 and Presidential and Gubernatorial Prayer Proclamations calling on citizens to pray violate the Establishment Clause of the First Amendment to the United States Constitution.
2. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
3. Venue is appropriate in the District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(e).
4. The plaintiff, Freedom From Religion Foundation, Inc. ("FFRF"), is a Wisconsin non-stock corporation whose principal office is in Madison, Wisconsin; FFRF is a membership organization working for the separation of church and state and to educate on matters of nontheism.

5. FFRF has more than 12,000 members, including members in every state of the United States, who are opposed to government endorsement of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

6. FFRF's purposes are to promote the fundamental constitutional principle of separation of church and state and to educate on matters relating to nontheism.

7. The plaintiff, Anne Nicol Gaylor, resides in Madison, Wisconsin, and she is a lifetime member of and president emerita of FFRF, and a member of FFRF Board of Directors, and she is a non-believer who is opposed to governmental endorsement of religion.

8. The plaintiff, Paul Gaylor, also resides in Madison, Wisconsin, and he is a lifetime member and Board member of FFRF, and he is a non-believer who is opposed to governmental endorsement of religion.

9. The plaintiff, Annie Laurie Gaylor, also resides in Madison, Wisconsin, and she is a lifetime member of and co-president of FFRF, and she is the editor of FFRF's periodical "Freethought Today," and she also is a non-believer who is opposed to governmental endorsement of religion.

10. The plaintiff, Dan Barker, also resides in Madison, Wisconsin, and he is a lifetime member of and co-president of FFRF, and he is Public Relations Director of FFRF, and he also is a non-believer who is opposed to governmental endorsement of religion.

11. The plaintiff, Phyllis Rose, also resides in Madison, Wisconsin, and she is a lifetime member of FFRF and Secretary of the FFRF Executive Council, and she is a non-believer who is opposed to governmental endorsement of religion.

12. The plaintiff, Jill Dean, also resides in Madison, Wisconsin, and she is a lifetime member and a Board member of FFRF, and she is a non-believer who is opposed to governmental endorsement of religion.

13. The defendant, George W. Bush, is the President of the United States of America.

14. President Bush is sued in his official capacity as the President of the United States in this action seeking a declaratory judgment that Public Law 100-307, mandating Presidential Proclamations of a National Day of Prayer, violates the Establishment Clause of the First Amendment to the United States Constitution.

15. The defendant, Dana Perino, is the White House Press Secretary for President Bush.

16. Secretary Perino is sued in her official capacity as the occupant of the Office of White House Press Secretary in this action seeking a declaratory judgment that specific Presidential Prayer Proclamations violate the Establishment Clause.

17. The defendant, Governor Jim Doyle, is the Governor of the State of Wisconsin.

18. Governor Doyle is sued in his official capacity as the Governor of the State of Wisconsin.

19. The defendant, Shirley Dobson, is the Chairman of the National Day of Prayer Task Force ("NDP Task Force"), 8605 Explorer Drive, Colorado Springs, Colorado 80935, an entity created for the express purpose of organizing and promoting National Prayer Day observances conforming to a Judeo-Christian system of values.

20. The Establishment Clause of the First Amendment to the United States Constitution prohibits government officials and persons acting in joint and concerted action with government

officials from taking actions that endorse religion, including actions that prefer religion over non-religion.

21. President Bush has issued official Proclamations, including in 2008, declaring a National Day of Prayer, as mandated by Public Law 100-307.

22. The designation of a National Day of Prayer has the intent and the effect of giving official recognition to the endorsement of religion; a National Day of Prayer has no secular rationale.

23. Prayer is an inherently and quintessentially religious activity.

24. Exhortations to pray in official Presidential proclamations, directed at all the citizens of the United States, including these plaintiffs, constitute an end in themselves intended to promote and endorse religion.

25. President Bush's mandated Proclamations of a National Day of Prayer inherently violate the Establishment Clause of the United States Constitution by endorsing religion over non-religion.

26. Secretary Perino is responsible for and she does publicly disseminate the Presidential Prayer Day Proclamations, including the 2008 Proclamation.

27. President Bush's mandated prayer proclamations violate the Establishment Clause by giving the appearance to an objective observer that the government prefers Judeo-Christian religious beliefs over other religious beliefs, by aligning and partnering with the NDP Task Force as the official organizer of the National Day of Prayer.

28. President Bush's 2008 Prayer Proclamation exhorts each citizen to pray and also expressly incorporates the NDP Task Force Theme and Biblical reference as part of the official Prayer Proclamation of the United States.

29. President Bush's 2008 Proclamation states:

On this National Day of Prayer, we ask God's continued blessings on our country. This year's theme, "Prayer! America's Strength and Shield," is taken from Psalm 28:7, "The Lord is my strength and my shield; my heart trusts in Him and I am helped." (Exhibit 1.)

30. President Bush adopted and incorporated the NDP Task Force Theme and Biblical reference as part of his National Day of Prayer Proclamation, but this Theme and Biblical reference are not otherwise mandated by Congress in any way; instead President Bush aligned the Office of the President with the NDP Task Force in joint and concerted action to endorse religion in violation of the Establishment Clause.

31. The joint action between President Bush and the NDP Task Force in proclaiming and designating a National Day of Prayer would be, and is, construed by objective observers to be government preference for and endorsement of the religious creed of the NDP Task Force.

32. The NDP Task Force identifies itself as the National Day of Prayer "Official Website."

33. President Bush, for his part, has embraced the NDP Task Force, including by incorporating content requested by the Task Force into his official Prayer Proclamation.

34. President Bush's alliance with the NDP Task Force creates the intended impression that the NDP Task Force and the government are working hand-in-glove in organizing the National Day of Prayer.

35. The collaborative relationship between the NDP Task Force and the Presidency further indicates to an objective observer that the President prefers and endorses the religious principles of the NDP Task Force.

36. The evangelical mission of the NDP Task Force is to "communicate with every individual the need for personal repentance and prayer."

37. Allegedly in accordance with Biblical truth, the NDP Task Force seeks to publicize and preserve America's alleged Christian heritage; encourage and emphasize prayer; and glorify the Lord in word and deed.

38. The NDP Task Force even requires that volunteer coordinators sign statements of belief that the "Holy Bible is the inerrant Word of the Living God."

39. The NDP Task Force represents a Judeo-Christian expression of the National Day of Prayer observance, based on the NDP Task Force belief that the United States was birthed in prayer and in reverence for the God of the Bible.

40. The NDP Task Force, in turn, has close ties to Focus On The Family, an aggressively evangelical religious organization.

41. The chairman of the NDP Task Force is Shirley Dobson, who is married to Focus On The Family Board Chairman and founder, James Dobson.

42. The NDP Task Force is located in the Focus On The Family headquarters.

43. Regardless whether any formal relationship exists between the NDP Task Force and Focus On The Family, an objective observer would perceive the government's alliance with the NDP Task Force, to represent an endorsement of religion.

44. The NDP Task Force aggressively promotes a Judeo-Christian creed, with the purpose and intent of mobilizing the Christian community in prayer through the vehicle of the National Day of Prayer.

45. The NDP Task Force seeks to encourage prayer that is inherently religious and that is conceitedly Christian.

46. The NDP Task Force explains its concept of prayer and why people should pray in explicitly Christian terms. (Exhibit 2.)

47. The joint and concerted action between President Bush and the NDP Task Force in issuing Prayer Proclamations, including those that expressly incorporate references to the NDP Task Force Theme and its Biblical precepts, clearly constitutes the endorsement of religion by President Bush in violation of the Establishment Clause.

48. Mandated Prayer Proclamations by the President exhorting each citizen to pray constitute an unabashed endorsement of religion, which endorsement is executed by Secretary Perino.

49. Official prayer proclamations exhorting citizens to engage in prayer create a bond between church and state, including by calls to others for the celebration of religion in public affairs.

50. Sheriff Dean Roland, in Burnett County, Wisconsin, for example, organized a prayer breakfast in recognition of the National Day of Prayer on May 1, 2008, to which event Sheriff Roland invited attendees on official Sheriff Department letterhead.

51. The keynote speaker at Sheriff Roland's Prayer Breakfast was Wisconsin Supreme Court Justice Michael Gableman, who was a sitting Circuit Court Judge in Burnett County, and had just been elected to the Wisconsin Supreme Court.

52. Justice Gableman recognized the National Day of Prayer proclaimed by President Bush, and mandated by Congress, as an official acknowledgment that continued reliance on Divine providence is intrinsic to and necessary for our nation's success and well-being.

53. Justice Gableman stated that Divine guidance animates the fundamental philosophy guiding our nation.

54. Justice Gableman further advised those who lack faith in a Higher Power to "consider that science seems to be testing out what believers have known for centuries . . . There is evidence of an intelligent order of the Universe, of which both man and nature are subservient."

55. Justice Gableman concluded by encouraging citizens to engage in prayer in order to fulfill the vision upon which the United States was allegedly founded.

56. The remarks of Justice Gableman exemplify the public endorsements of religion that official prayer proclamations, such as by President Bush, bring forth in the public domain.

57. Governor Doyle, in his official capacity as Governor of the State of Wisconsin, also has issued Prayer Proclamations, including a 2008 proclamation, which extol prayer and exhort Wisconsin citizens to pray. (Exhibit 3.)

58. Governor Doyle's Prayer Proclamations are intended as, and give the appearance of, Wisconsin's official endorsement of religion.

59. Governor Doyle, also aligns his Proclamations with the NDP Task Force, including by incorporating Task Force official themes.

60. As a result of pressure from, and the influence of the NDP Task Force, in fact, governors from all fifty of the United States now issue official proclamations declaring a National Day of Prayer on the first Thursday of May.

61. Fifteen of these state proclamations explicitly incorporate both the NDP Task Force's annual theme and Biblical reference.

62. The NDP Task Force acts in concert with state governors to issue proclamations endorsing prayer in order to show official endorsement of such religious activity.

63. The NDP Task Force provides Biblical references for such proclamations that align the proclamations with the Judeo-Christian principles on which the Task Force is based.

64. Many of the official state proclamations, like President Bush's proclamation, explicitly incorporate the NDP theme and chosen Biblical reference.

65. The 2008 Proclamation by Arkansas Governor Mike Beebe, for example, states that the Day of Prayer theme is "Prayer! America's Strength and Shield," and further states "As David reminds us in the Book of Psalms: 'The Lord is my Strength and Shield; my heart trusts Him and I am helped.'" (Exhibit 4.)

66. Colorado Governor Bill Ritter, Jr., also conforms the Colorado Day of Prayer Proclamation to the NDP Task Force's theme, stating that "The National Day of Prayer acknowledges Psalm 28: 7 'The Lord is my Strength and Shield, my heart trusts in Him, and I am helped.'" (Exhibit 5.)

67. Idaho Governor C.L. "Butch" Otter likewise aligns the Idaho 2008 Proclamation with the NDP Task Force, identifying "the motto of the National Day of Prayer and the State Day of

Prayer to be 'Prayer! America's Strength and Shield, a reaffirmation of the Biblical exhortation in Psalm 28:7.' " (Exhibit 6.)

68. Charlie Crist, Florida Governor, is another who incorporates the NDP Task Force theme and Biblical reference. (Exhibit 7.)

69. Illinois similarly acts in concert with the NDP Task Force, stating that the theme for the National Day of Prayer 2008 is "Prayer! America's Strength and Shield," which is "inspired by the passage found in Psalm 28:7," according to Governor Blagojevich. (Exhibit 8.)

70. The official 2008 Proclamation by Indiana Governor Mitchell E. Daniels, Jr., also pays tribute to the NDP Task Force theme, "inspired by the Scripture Psalm 28:7." (Exhibit 9.)

71. Kentucky Governor Steven L. Beshear similarly recognizes in his 2008 Proclamation the NDP Task Force theme for the National Day of Prayer, which he states "is based on Psalm 28:7." (Exhibit 10.)

72. The Louisiana 2008 Proclamation by Governor Bobby Jindal also incorporates the NDP Task Force theme and cites Psalm 28:7. (Exhibit 11.)

73. Massachusetts Governor Deval L. Patrick is another Governor using the NDP Task Force references in his 2008 Proclamation, citing the theme "inspired by Psalm 28:7." (Exhibit 12.)

74. Missouri Governor Matt Blunt also is on board with the NDP Task Force in his 2008 Proclamation, quoting Psalm 28:7, as well as the NDP Task Force National Day of Prayer theme. (Exhibit 13.)

75. New Jersey Governor Jon S. Corzine joins with the other Governors in his 2008 Proclamation, quoting the NDP Task Force theme "which was taken from Psalm 28:7." (Exhibit 14.)

76. John M. Huntsman, Jr., Governor of the State of Utah, cites the same NDP Task Force theme, said to be "inspired by Psalm 28:7." (Exhibit 15.)

77. The 2008 proclamation by Virginia Governor Timothy M. Kaine also comes from the NDP Task Force theme for this year's Day of Prayer, which "comes from the Scripture Psalm 28:7." (Exhibit 16.)

78. The Governor of Wyoming, Dave Freudenthal, also quotes Psalm 28:7, and incorporates NDP Task Force theme. (Exhibit 17.)

79. Dave Heineman, Governor of Nebraska, engages in the same concert of action with the NDP Task Force in his 2008 Proclamation, citing the NDP Task Force theme, which "reflects the words in Psalm 28:7 that we find help as we trust in God." (Exhibit 18.)

80. Other state proclamations also explicitly align themselves with the NDP Task Force theme for the 2008 Prayer Day.

81. Other proclamations that make explicit reference to the NDP Task Force 2008 theme include proclamations by the Governor of Connecticut, M. Jodi Rell (Exhibit 19); the Governor of Delaware, Ruth Ann Minner (Exhibit 20); the Governor of Georgia, Sonny Perdue (Exhibit 21); the Governor of Nevada, Jim Gibbons (Exhibit 22); the Governor of New Mexico, Bill Richardson (Exhibit 23); the Governor of North Carolina, Michael F. Easley (Exhibit 24); the Governor of Oklahoma, Brad Henry (Exhibit 25); the Governor of South Dakota, M. Michael Rounds (Exhibit 26); the Governor of Tennessee, Bill Bredesen (Exhibit 27); and the Governor of Texas, Rick Perry (Exhibit 28.)

82. The concerted actions by these Governors to include the NDP Task Force theme and/or Biblical reference are not accidental or coincidental; they are the result of joint action with the NDP Task Force.

83. The influence of the NDP Task Force on the various governors is revealed by the Proclamation of the Governor of Montana, Brian Schweitzer, who addressed his proclamation in the form of a letter to the Montana State Coordinator for the National Day of Prayer Task Force, Pat Kempf. (Exhibit 29.)

84. All of the governors have been influenced by the Presidential proclamations of a National Day of Prayer and the admonitions of the NDP Task Force, so that all of the states issued proclamations declaring May 1, 2008 as a Day of Prayer, including Alabama Governor Bob Riley (Exhibit 30); Alaska Governor Sarah Palin (Exhibit 31); Arizona Governor Janet Napolitano (Exhibit 32); California Governor Arnold Schwarzenegger (Exhibit 33); Hawaii Governor Linda Lingle (Exhibit 34); Iowa Governor Chester J. Culver (Exhibit 35); Kansas Governor Kathleen Sebelius (Exhibit 36); Maine Governor John E. Baldicci (Exhibit 37); Maryland Governor Martin O'Malley (Exhibit 38); Michigan Governor Jennifer M. Granholm (Exhibit 39); Minnesota Governor Tim Pawlenty (Exhibit 40); Mississippi Governor Haley Barbour (Exhibit 41); New Hampshire Governor John H. Lynch (Exhibit 42); New York Governor David A. Paterson (Exhibit 43); North Dakota Governor John Hoeven (Exhibit 44); Ohio Governor Ted Strickland (Exhibit 45); Oregon Governor Theodore R. Kulongoski (Exhibit 46); Pennsylvania Governor Edward G. Rendell (Exhibit 47); Rhode Island Governor Donald L. Carcieri (Exhibit 48); South Carolina Governor Mark Sanford (Exhibit 49); Washington Governor Christine O. Gregorie (Exhibit 50); and Vermont Governor James H. Douglas (Exhibit 51.)

85. Governor Joe Manchin III, Governor of the State of West Virginia, issued a prayer proclamation "encouraging all citizens to join in a national effort to better our country through increased spiritual awareness and active participation." (Exhibit 52.)

86. Prayer proclamations by public officials, including proclamations by the President and governors of the United States, convey to non-religious Americans that they are expected to believe in God.

87. Such official proclamations reflect the official policy of the Federal government and the states, sending a message that religion is preferred over non-religion.

88. Many of the state proclamations also explicitly reference and align with the Presidential Proclamations, which Presidential Proclamations give the appearance of religious endorsement.

89. Official prayer proclamations send a message that believers in religion are political insiders - - and non-believers are political outsiders.

90. Official prayer proclamations are intended to convey a message of endorsement to each citizen with an exhortation that all citizens should engage in prayer.

91. Official prayer proclamations are intended to be public and to become known by all citizens, to whom prayer proclamations are directed.

92. Official prayer proclamations are intended to be, and are received by citizens, including the plaintiffs, as exhortations to pray.

93. These exhortations to pray are received by the citizens of the United States as official proclamations directed from President Bush, and similar proclamations are directed at the citizens of each state by official proclamations by the governors of those states.

94. Designations of an official Day of Prayer by Presidential and Gubernatorial proclamations, encouraging celebration of prayer, create a hostile environment for non-believers, who are made to feel as if they are political outsiders.

95. The individual plaintiffs in this lawsuit, as well as members of FFRF in all 50 United States, are subjected to these unwanted proclamations to pray and resulting public celebration of religion in the public realm, including dissemination by Secretary Perino.

96. FFRF, in fact, has more than 12,000 members, including members in each of the United States, and one purpose of FFRF is to represent and advocate on behalf of its members throughout the United States.

97. Further unwanted contact with exhortations and public celebrations of prayer by government officials is imminent because future prayer proclamations and designations of official prayer days by the President and Press Secretary, acting in their official capacities, as well as by the various governors of the States, are already planned for 2009.

98. With more than 12,000 members throughout the United States, FFRF members will continue to be exposed to unwanted proclamations of prayer and public celebrations of religion in the public domain, including as the result of Secretary Perino's actions.

99. Official days of prayer are intended to be known by, and acted upon by each individual citizen, regardless of their creed or non-belief; such proclamations create a culture of officially-sanctioned religiosity.

100. Official prayer day proclamations by the President, acting in his official capacity, and disseminated by Secretary Perino, and proclamations by the various governors, acting in their official capacities, also adversely affect the organizational interests of FFRF.

101. Prayer proclamations and designations of Days of Prayer give official institutional support to the endorsement of religion by government, acting in the public realm.

102. FFRF, as an organization, has the mission and purpose to promote the Constitutional principle of separation of church and state and to educate on matters relating to nontheism.

103. Official prayer proclamations by the President, and disseminated by Secretary Perino, and proclamations by the Governors of the United States adversely affect the ability of FFRF to carry out its organizational mission, including because such proclamations and designation of public Days of Prayer give formal institutional and governmental recognition establishing religion.

104. Official and institutional recognitions of religion in the public realm further call forth and encourage other public officials to engage in public ceremonies endorsing religion, including the quintessential religious act of prayer.

105. The ability of FFRF to carry out its organizational mission to keep separate church and state is adversely affected by prayer proclamations and designations of Days of Prayer, because they precipitate and give official sanction to, governmental endorsements of religion.

106. Presidential prayer proclamations, for example, are frequently cited and incorporated in the resulting proclamations of the various governors as being authorized by the Federal government.

107. Official proclamations of prayer, such as by President Bush and Governor Doyle, the governors of other states, and Secretary Perino, adversely affect the organizational interests of FFRF, and require the dedication of corrective resources and time by FFRF, and they frustrate the accomplishment of FFRF's mission to keep separate church and state.

108. The mandated actions of President Bush, in his official capacity, in issuing prayer proclamations and dedicating days of prayer, and disseminated by Secretary Perino, violate the fundamental principle of the separation of church and state, including by actively and intentionally endorsing religion.

109. The actions of Governor Doyle in issuing prayer proclamations and dedicating days of prayer also violate the fundamental principle of the Establishment Clause, as well as the Wisconsin Constitution, by giving the appearance of the government's official support for and advocacy of religion through the medium of prayer.

110. Governor Doyle's actions in issuing prayer proclamations are taken in his official capacity and under color of law.

111. Governor Doyle's actions violate the provisions of the United States and the Wisconsin Constitutions requiring the separation of church and state and prohibiting the endorsement of religion, and his actions also violate § 1983 of Title 42 of the United States Code.

112. The actions of the NDP Task Force also violate § 1983 and the Establishment Clause because the Task Force has been and continues to act in concert and collaboration with state officials to effect violations of the Establishment Clause by the governors of the various states, as well as in concert with President Bush.

113. The NDP Task Force has been and continues to be a wilful participant with state and federal officials in joint action that violates the Establishment Clause through the various prayer proclamations, including those proclamations that explicitly align themselves with the NDP Task Force Biblical reference and Prayer Day theme, by President Bush and the Governors from Arkansas, Colorado, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Missouri, New

Jersey, Nebraska, Utah, Virginia, and Wyoming, each of whom issued proclamations in 2008 that explicitly incorporated the NDP Task Force Biblical reference to Psalm 28:7.

114. The actions of the defendants are injurious to the interests of the plaintiffs individually, and to FFRF in its representative and organizational capacity, because the defendants' actions subject the plaintiffs to official admonitions and exhortations to pray, and expose them to unwanted endorsements of religion, which violate the Establishment Clause.

WHEREFORE, the plaintiffs demand judgment as follows:

- A. For declaratory judgment that Public Law 100-307 is unconstitutional;
- B. For declaratory judgment that prayer proclamations disseminated by Secretary Perino violate the Establishment Clause;
- C. For declaratory judgment that prayer proclamations by Governor Doyle designating a Day of Prayer and exhorting citizens to pray violate the Establishment Clause of the First Amendment to the United States Constitution and the Wisconsin Constitution;
- D. For declaratory judgment that the actions of Shirley Dobson, as Chairman of the National Day of Prayer Task Force, in concert with state and federal officials, constitute joint action that violates the Establishment Clause, including through joint and collaborative action with President Bush, Secretary Perino, and state officials in Arkansas, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Missouri, Nebraska, New Jersey, Utah, Virginia, Wyoming, Delaware, Georgia, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.
- E. For declaratory judgment that the actions of Governor Doyle and Shirley Dobson as Chairman of the National Day of Prayer Task Force violate 42 U.S.C. § 1983; and

F. For judgment awarding the plaintiffs their reasonable costs, disbursements and attorneys fees, as allowed by law, from Governor Doyle and Shirley Dobson as Chairman of the NDP Task Force, pursuant to 42 U.S.C. § 1988.

Dated this 3rd day of October, 2008.

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/S/

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